

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6113L

v.

DANIEL CELELLI,

Defendant.

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I referred all motions in this criminal case to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Defendant duly moved for relief in several matters, including a motion to dismiss on the grounds that the filed indictment violated the statute of limitations. (Dkt. #18).

Magistrate Judge Payson reviewed the papers and held argument and issued a oral Report and Recommendation recommending that the motion to dismiss be denied, on July 13, 2006.

I have reviewed the papers, and listened to the proceedings on July 13, 2006, which were recorded. Magistrate Judge Payson determined that the indictment on its face appeared proper. The conspiracy charged criminal activity from 1994 to July 2002. On its face, the indictment appears proper and defendant has not suggested otherwise.

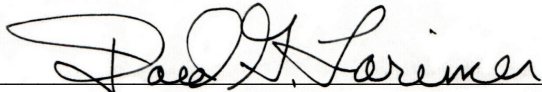
At trial, if the proof shows that the defendant did withdraw from the conspiracy well before the appropriate limitations, then defendant may renew the motion during or after trial. But, at this stage, the grand jury has returned an indictment which on its face appears proper and does not violate the statute of limitations.

Magistrate Judge Payson issued her Report and Recommendation orally on July 13, 2006 and issued a written Decision, incorporating by reference the oral Report and Recommendation, on July 17, 2006. Defendant has not appealed or filed any objection to Magistrate Judge Payson's Report and Recommendation. Therefore, I adopt the Report and Recommendation of United States Magistrate Judge Marian W. Payson in all respects.

#### CONCLUSION

Defendant's motion to dismiss the indictment for violation of the statute of limitations (Dkt. #18) is in all respects denied.

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
August 3, 2006.